

ASSEMBLY BILL

No. 1727

Introduced by Assembly Member Gonzalez

January 28, 2016

An act to amend Section 2750.5 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1727, as introduced, Gonzalez. Employment relations.

Existing law provides a rebuttable presumption affecting the burden of proof that a worker performing services for which a license is required under the Contractors' State License Law, or performing services for a person who is required to obtain that license, is an employee, rather than an independent contractor, and specifies factors to establish proof of independent contractor status.

This bill would make nonsubstantive changes to these provisions.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 2750.5 of the Labor Code is amended to
2 read:
3 2750.5. (a) There is a rebuttable presumption affecting the
4 burden of proof that ~~a worker~~ *an individual* performing services
5 for which a license is required pursuant to Chapter 9 (commencing
6 with Section 7000) of Division 3 of the Business and Professions
7 Code, or who is performing such services for a person who is
8 required to obtain such a license is an employee rather than an

1 independent contractor. Proof of independent contractor status
2 includes satisfactory proof of these factors:

3 ~~(a)~~

4 (1) That the individual has the right to control, and discretion
5 as to the manner ~~of~~, performance of the contract for services in
6 that the result of the work and not the means by which it is
7 accomplished is the primary factor bargained for.

8 ~~(b)~~

9 (2) That the individual is customarily engaged in an
10 independently established business.

11 ~~(c)~~

12 (3) That the individual's independent contractor status is bona
13 fide and not a subterfuge to avoid employee status. A bona fide
14 independent contractor status is further evidenced by the presence
15 of cumulative factors such as substantial investment other than
16 personal services in the business, holding out to be in business for
17 oneself, bargaining for a contract to complete a specific project
18 for compensation by project rather than by time, control over the
19 time and place the work is performed, supplying the tools or
20 instrumentalities used in the work other than tools and
21 instrumentalities normally and customarily provided by employees,
22 hiring employees, performing work that is not ordinarily in the
23 course of the principal's work, performing work that requires a
24 particular skill, holding a license pursuant to the Business and
25 Professions Code, the intent by the parties that the work
26 relationship is of an independent contractor status, or that the
27 relationship is not severable or terminable at will by the principal
28 but gives rise to an action for breach of contract.

29 ~~In~~

30 (b) *In* addition to the factors contained in ~~subdivisions (a), (b),~~
31 ~~and (c), any paragraphs (1), (2), and (3) of subdivision (a), a~~
32 person performing any function or activity for which a license is
33 required pursuant to Chapter 9 (commencing with Section 7000)
34 of Division 3 of the Business and Professions Code shall hold a
35 valid contractors' license as a condition of having independent
36 contractor status.

37 ~~For~~

38 (c) *For* purposes of workers' compensation law, this
39 presumption is a supplement to the existing statutory definitions
40 of employee and independent contractor, and is not intended to

1 lessen the coverage of employees under Division 4 and Division
2 5.

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